Supreme Court, U.S.
FILED
OCT 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-401

In The

Supreme Court of the United States

October Term, 1989

CYRIL H. WECHT, President of the Allegheny County Board of Prison Inspectors and the other members of the Board; THOMAS FOERSTER and WILLIAM H. HUNT, Commissioners for Allegheny County; FRANK J. LUCCHINO, Controller for Allegheny County, EUGENE COON, Sheriff for Allegheny County; THE HONORABLE PATRICK R. TAMILIA, MICHAEL J. O'MALLEY and MARION K. FINKELHOR, Judges Court of Common Please of Allegheny County; RICHARD S. CALIGUIRI, Mayor of the City of Pittsburgh; HARRIET McCRAY; Monsg. CHARLES OWEN RICE and CHARLES KOZAKIEWICZ, Warden of the Allegheny County Jail, and WILLIAM B. ROBINSON, Executive Director of Prison Inspectors, and CYRIL WECHT, THOMAS FOERSTER and WILLIAM H. HUNT, as Commissioners of Allegheny County,

Petitioner,

vs.

INMATES OF THE ALLEGHENY COUNTY JAIL, THOMAS PRICE BEY, ARTHUR GOSLEE, ROBERT MALONEY, and CALVIN MILLIGAN, on their own behalf and on behalf of all others similarly situated,

Respondents.

BRIEF OF RESPONDENTS INMATES OF THE ALLEGHENY COUNTY JAIL et al. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

DONALD DRISCOLL,
Counsel of Record
MICHAEL ANTOL
NEIGHBORHOOD LEGAL SERVICES ASSOCIATION
928 Penn Avenue
Pittsburgh, PA 15222
(412) 644-7420
Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

Table of Authorities ii

Counterstatement of the Case..... 1

Summary of the Argument 6

Argument 7

A. This Court Is Without Jurisdiction to Review The Order Of The Court of Appeals Since There No Longer Remains A Live Controversy..... 7

B. The District Court Did Not Exceed Its Authority In Ordering That The Allegheny County Jail Be Closed..... 8

C. The Decision Of The Court Of Appeals In The Present Case Does Not Conflict With Prior Decisions Of This Court Or Other Courts Of Appeals. 11

Conclusion 13

TABLE OF AUTHORITIES

Page

CASES

Allegheny Co. v. Commonwealth, 518 Pa. 556, 544 A.2d 1305 (1988) 12

Bounds v. Smith, 430 U.S. 817 (1977)..... 12

Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974) 12

Inmates of Allegheny County Jail v. Wecht, 565 F. Supp. 1278 (W.D. Pa. 1983) 1

Inmates of Allegheny County Jail v. Wecht, 573 F. Supp 454 (W.D.Pa. 1983)..... 1

TABLE OF AUTHORITIES – Continued

Page

Inmates of Allegheny County Jail v. Wecht, 754 F.2d 120 (3d Cir. 1985) 2

Inmates of Allegheny County Jail v. Wecht, 612 F. Supp. 874 (W.D. Pa. 1985) 3

Inmates of Allegheny County Jail v. Wecht, 699 F. Supp. 1137 (W.D. Pa. 1988) 4, 9, 10, 11

Inmates of Allegheny County Jail v. Wecht, 874 F.2d 147 (3d Cir. 1989) 5

Jones v. Wittenburg, 330 F. Supp. 707 (N.D. Ohio 1971), aff'd sub nom., *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972)..... 11

Jordan v. Wolke, 593 F.2d 772 (7th Cir. 1978)..... 12

Liner v. Jafco, Inc., 375 U.S. 301 (1964)..... 7

Miller v. Carson, 563 F.2d 741 (5th Cir. 1977) 9, 12

Millilken v. Bradley, 418 U.S. 717 (1974)..... 9

Millilken v. Bradley, 433 U.S. 267 (1977)..... 8, 9, 10

North Carolina v. Rice, 404 U.S. 244 (1971)..... 7

Reece v. Gragg, 650 F. Supp. 1297 (D.Kan. 1986)..... 11

CONSTITUTION

U.S. Const. Article III..... 7

STATUTES

61 P.S. § 407.4..... 12

COUNTERSTATEMENT OF THE CASE

The procedural history of this case, as set out in the Statement of the Case section of the Petition for a Writ of Certiorari, is accurate but incomplete. It fails to fully set out the repeated efforts of the Respondents (hereafter "inmates") and the U.S. District Court for the Western District of Pennsylvania to remedy the unconstitutional conditions prevailing at the Allegheny County Jail (hereafter "Jail").

In addition to seeking to hold the Petitioners (hereafter "County officials") in contempt for violating the past orders of the District Court in April, 1983, the inmates moved for additional relief at that time to address severe overcrowding at the Jail (Docket Entry 162 as set out in the unnumbered first inclusion of the Appendix before the Court of Appeals (hereafter "A.")).

Following the entry of the District Court's May 25, 1983 opinion regarding overcrowding and other unconstitutional conditions prevailing at the Jail and its order entered that date to reduce this population (*Inmates v. Wecht*, 565 F. Supp. 1278), the District Court on October 20, 1983 determined it to be necessary to order the release of the lowest bondable inmates to achieve compliance with the population limitations (*Inmates v. Wecht*, 573 F. Supp. 454). In doing so the Court made clear that "any release of prisoners as a result of this order should be recognized as a final, albeit temporary, effort to ameliorate the situation, not as a solution to the problem" (573 F. Supp. at 457). Even so the District Court first requested that the Court of Common Pleas of Allegheny County

submit its plan for bringing the Jail population into compliance with the May, 1983 order. In cooperation with various County agencies, this plan was submitted on October 31, 1983 (A., Docket Entries No. 206). The District Court in a Memorandum Order dated November 1, 1983, noted that it was delighted to receive this alternate plan and stated:

> As I said from the beginning it has never been the intent of this Court to preempt what it sees as a County function – the maintenance of a County Jail that complies with the mandates of the Constitution of the United States.

The District Court's November 1, 1983 order accepted the alternate plan's provision that the lowest bondable inmate be released only after other efforts, as set out in the alternate plan, do not achieve compliance.

Following a hearing on December 30, 1983 the District Court ordered that the County pay a fine of $5,000 for each inmate released after February 15, 1984 since it determined that the County had failed to provide interim, alternate facilities despite its capability of doing so (the full text of the December 30, 1983 order is set out at *Inmates v. Wecht*, 754 F.2d 120, 124 n.2 (3d Cir. 1985)). On appeal of this fine order, the Third Circuit reversed and remanded the matter back to the District Court. Id. It did so not because it determined that alternate facilities were being provided or that the County lacked the capability to provide such facilities, but because the direction to provide alternate facilities had not been made sufficiently explicit. Id. 754 F.2d at 129-130.

On remand the District Court on February 28, 1985 again determined that alternate facilities had not been

provided and directed the County to obtain such facilities by May 6, 1985 or be subject to a $5,000 per inmate released fine (A., docket entry 260). When this order was not met, a new fine order dated May 7, 1985 was entered. (A., docket entry 267).

The County officials thereupon began to refuse to accept prisoners committed to the Jail. This resulted in the extended detention of pre-trial detainees in police lockups not designed for overnight use. On June 26, 1985 this practice was found to be unconstitutional and enjoined (*Inmates v. Wecht*, 612 F. Supp 874).

Appeals were taken from the February 28, 1985, May 7, 1985 and June 26, 1985 orders. However, the merits of these appeals were not reached. Instead, based upon the County's stipulation to open a jail annex facility (hereafter "Jail Annex") with a 435 inmate capacity, the District Court agreed to forgive the accumulated fines. The Court of Appeals then dismissed the appeals based upon this stipulation (A.1-5). In its June 2, 1986 Memorandum Order forgiving the fines, the District Court admonished the County to study whether the "very old and decrepit" Jail should be discontinued as a jail facility. "This should be done now, not after another crisis." The Court gave "fair warning for the future" that it intended to exercise its equitable authority to assure the on-going compliance by the County with its constitutional and statutory responsibilities.

Unbeknownst to the District Court at the time, the County had completed a study in 1985, known as the Kimball Report, which concluded that the Jail was in a substantially deteriorated and dangerous condition and

should be replaced (A.63, 437, 438, 559-594). This report determined that rehabilitation of the Jail "was not economically viable and definitely not recommended" (A.563).

In addition, an April, 1987 County commissioned study carried out by medical and mental health experts, among others, concluded that the provision of mental health care at the Jail was inadequate. This report emphasized the need for larger and more appropriate mental health space. It termed this a "high priority" and concluded that this could not be accomplished within the existing facility. See Plaintiffs' Trial Exhibit 2 to the October 13 and 14, 1988 hearing at p.11 § III(2)(A). See also the November 17, 1988 opinion of the District Court, 699 F. Supp. 1137, 1142, 1145-46 (Appendix to the Petition for Writ of Certiorari at pages 9a, 17a and 18a).

This matter again came before the District Court in January, 1988 following a December 30, 1987 report of the Court appointed monitor, which concluded that the Court ordered population limitations were being routinely exceeded (A.53). Plaintiffs also filed at that time a Motion for Sanctions or in the Alterative Supplementary Relief, raising substantial overcrowding at the Jail Annex, among other things.

Following a hearing, the District Court found that the population limitations at both the Jail and Annex were being regularly exceeded and again ordered that this be discontinued (Memorandum Order of February 9, 1988 (A.23 and 25)). However, with respect to the Jail, this did not occur. Following a renewal of the motion for sanctions and additional relief, a hearing was conducted on

October 13 and 14, 1988. The District Court, thereupon, issued its opinion and order dated November 17, 1988 (Appendix to the Petition for Writ of Certiorari, pages 1a-27a).

The Court of Appeals affirmed that part of the order appealed from which directed that no inmates shall be housed in the main facility of the Allegheny County Jail after June 30, 1990. *Inmates v. Wecht*, 874 F.2d 147, 155 (3d Cir. 1989) (Appendix to the Petition at pp. 46a-47a). Although that Court repeated its prior determination that the District Court has the power to order responsible public officials to prepare and submit plans for remedying constitutional violations (874 F.2d at 150, Appendix 34a), it held that the order to submit a plan was itself interlocutory and unreviewable. The Court determined that the plan order did not itself provide for any specific relief to the inmates, did not sufficiently set out the content of the plan to be produced and was reviewable after the District Court ordered the County officials to take action following the plan's submission.

The plan was subsequently submitted to the District Court on May 1, 1989. The plan did not specify how the County intended to develop the number of secured cells which the County determined to be necessary. Instead it set out three options still under consideration, one of which included the reconstruction of the Jail. Following a hearing on the plan's adequacy but before the District Court reached a decision on this, the parties on July 6, 1989 reached a settlement agreement regarding the plan and an outstanding sanction issue due to continued overcrowding during the period December, 1988 through July, 1989.

This agreement provided that the County could choose to renovate the Jail to bring it up to constitutional standards or replace it. It also provided that this decision would be made by October 1, 1989, and that in either event the renovations or replacement would be completed by June 30, 1992 subject to requests for reasonable extensions. The agreement also provided for certain interim repairs to be made at the Jail, for the creation of certain community based treatment/work release facilities, for the creation of certain temporary beds pending renovation or replacement, and for relief from fines which may otherwise be ordered up through the date of the agreement. This agreement was approved by the District Court on July 7, 1989. A copy of the agreement and approval order are appended to this response at pp. App. 1 through App. 6.

SUMMARY OF ARGUMENT

This Court lacks jurisdiction to review the affirmance by the Court of Appeals of the District Court order to cease housing inmates at the Allegheny County Jail after June 30, 1990 since the parties have subsequently settled this issue. With the District Court's approval the parties have agreed that the County may continue to house inmates at the Allegheny County Jail.

Alternatively it is argued that the District Court did not exceed its authority in ordering that the Allegheny County Jail be closed since the undisputed facts presented to it established that the unconstitutional conditions present were irremediable.

The cost of protecting a constitutional right may not justify its denial. District courts have the equitable authority to order responsible officials to take measures to cure constitutional violations which require the expenditure of funds.

ARGUMENT

A. THIS COURT IS WITHOUT JURISDICTION TO REVIEW THE ORDER OF THE COURT OF APPEALS SINCE THERE NO LONGER REMAINS A LIVE CONTROVERSY

It is fundamental that this Court lacks jurisdiction to review a moot question. This "impotence . . . 'derives from the requirements of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.' " *North Carolina v. Rice*, 404 U.S. 244, 246 (1971), quoting from *Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n. 3 (1964).

The County officials are requesting that this Court review the Court of Appeal's affirmance of the District Court's order which required that no inmates be housed in the Allegheny County Jail after June 30, 1990. Following the Court of Appeals' affirmance, this issue has become moot.

In the course of negotiating a number of issues which remained before the District Court including the adequacy of the County's plan to house inmates committed to it, and potential fines for past violations of population limitation orders, the parties entered into an agreement which provides that the County has the option to keep

the Jail open until June 30, 1992 and thereafter if constitutional deficiencies are addressed. See the Stipulation of the Parties appended to this Brief at pp. App. 1 through App. 7 and in particular para. 11. This stipulation was approved by the District Court on July 7, 1989 (p. App. 6).

The Petitioners before this Court have not sought review of the District Court's findings as to the presence of unconstitutional conditions at the Jail. It only questioned whether specific unconstitutional conditions should be ordered remedied as opposed to the requirement that the Jail as a whole be closed. It now has the option to remedy the specific unconstitutional conditions. Before this Court it is making an issue out of nothing.

Since the issue of whether the District Court exceeded its equitable authority by ordering that the Jail be closed is now an abstract question, the present Petition for a Writ of Certiorari should be dismissed.

B. THE DISTRICT COURT DID NOT EXCEED ITS AUTHORITY IN ORDERING THAT THE ALLEGHENY COUNTY JAIL BE CLOSED

Respondents do not disagree with the recitation of authority set forth in Part I of the Petition for Writ of Certiorori (pp. 7-12). The Court of Appeals agreed that the relief ordered cannot go beyond the constitutional violations found. 874 F.2d at 153 (p. 42a of the Appendix to the Petition), citing *Milliken v. Bradley*, 433 U.S. 267, 280-81 (1977) (*Milliken II*). The District Court was also aware that its equitable authority was limited. It stated:

> This Court is fully aware of the judicial restraint which federal courts must exercise in attempting to remedy constitutional violations in a correctional institution. We have respect for the allocation of functions in our federal system and for comity toward the County and the Commonwealth. To that end, we have attempted to exercise control over the last twelve years by fashioning what we deem to be conservative relief consistent with the policy of minimum intrusion into the affairs of the County's prison administration. However, it is now apparent that these measures were ineffective; the time has come to implement more stringent remedies.

699 F. Supp. at 1146 (p. 19a of the Appendix to the Petition for Writ of Certiorori).

The citations by the lower Courts in this case to the decision in *Miller v. Carson*, 563 F.2d 741, 751 (5th Cir 1977), to the effect that a district court need not confine itself to the elimination of specific conditions when the totality of conditions in a jail violates the Constitution, should be read in light of the Courts' awareness of the limitations on a district court's authority. See for example 874 F.2d at 153 (p. 42a of the Appendix to the Petition). *Miller* stands for the proposition that steps may be taken which in isolation would not be constitutionally mandated, if these steps are necessary to fully eradicate the effects of unconstitutional conditions. *Miller* involved certain recreational programs. In the educational context a tutoring program may be ordered to overcome the effects of past discrimination where in isolation it would not be constitutionally required. See for example *Milliken II*, 433 U.S. at 279-82, quoting *Milliken v. Bradley*, 418 U.S. 717,

738 (1974) (*Milliken I*) ("where . . . a constitutional violation has been found, the remedy does not 'exceed' the violation if the remedy is tailored to cure the *'condition* that offends the Constitution.' " (emphasis supplied in *Milliken II*)). Read in this manner, as the Court of Appeals obviously intended, there is nothing inconsistent between the *Miller* principle and the longstanding authority of this Court cited by the present Petitioners.

In any event the record in the present case indisputably established that the unconstitutional conditions found, whether viewed specifically or in total, could not be remedied in this facility without a prohibitive expenditure of funds. "The Jail . . . is a fortress-like stone structure to which additional floor space cannot be added. These same physical inadequacies prevent the County from remodeling it to meet constitutional standards . . . " (699 F. Supp. at 1147 (p. 21a of the Appendix to the Petition)). The consultants "were confined by the configurational parameters of the physical plant which were fed not only by the plan of the facility, but by restraints placed on any additions which would violate the [historic] landmark status of the building." (A.561). The County was aware of this since 1985 (A.536). It made no effort to rebut this during the 1988 hearing.

Over and above the specific conditions referred to by the County officials in their Petition at p. 11 (overcrowding, insufficient and under-qualified staff, fire hazards and low quality of medical and psychiatric care) there were numerous others found by the County's consultants and ultimately by the District Court. These included an unsafe and unreliable heating plant, a defective master locking system (in part resulting from the structural

instability of the free standing and largely deteriorated cell blocks (A. 573-577)) and inadequate mental health space, cell space, and recreation space. 699 F. Supp. at 1140-41 and 1143-46 (pages 8a and 13a to 18a of the Appendix to the Petition). Since the County officials presented no evidence that there is a less intrusive remedy for these conditions than that "definitely recommended" by its own consultants and ordered by the District Court, it should not be heard at this time to argue that the District Court exceeded its equitable authority.

C. THE DECISION OF THE COURT OF APPEALS IN THE PRESENT CASE DOES NOT CONFLICT WITH PRIOR DECISIONS OF THIS COURT OR OTHER COURTS OF APPEALS

The County officials contend that the Court of Appeals affirmance of the District Court's order to close the Jail and submit a plan for a new facility or alternate housing is in conflict with two district court decisions, one of which was affirmed by the Sixth Circuit, *Reece v. Gragg*, 650 F. Supp. 1297 (D. Kan. 1986) and *Jones v. Wittenburg*, 330 F. Supp. 707 (1971), aff'd sub nom., *Jones v. Metzger*, 456 F.2d 854 (6th Cir 1972). However, these decisions simply stand for the proposition addressed in the previous section of this response, i.e. that a district court should not go beyond that which is necessary to remedy the constitutional violations found. As previously argued, the District Court in the present case acted only after years of County intransience, ordered that relief which was minimally necessary to address the Constitutional violations, and left to the County the responsibility

to determine how it was to replace the unconstitutional facility.

The County officials also contend that the decision of the Court of Appeals in the present case conflicts with the Seventh Circuit's decision in *Jordan v. Wolke*, 593 F.2d 772 (7th Cir. 1978). The principles for which *Jordan* is cited, that the courts may not order a public body to expend monies, and that a public body can be given two options, to operate a jail constitutionally or not at all, were dicta. Nevertheless, it is clear after reviewing the authorities cited for these propositions, *Miller v. Carson* and *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974), that the Court in *Jordan* meant what it stated in a literal sense.

Certainly a federal court cannot directly order a state or local public body to appropriate monies. However, it can order such a public body to comply with the Constitution which may entail the expenditure of monies. See for example, *Bounds v. Smith*, 430 U.S. 817, 822-25 (1977). Although in the final analysis a state or local body may choose not to operate a jail or prison system at all, the facts in the present case did not bear out that the County officials would even consider such an irresponsible approach. State law in any event requires that the County operate the Jail and provides sufficient taxing authority for this purpose. 61 P.S. § 407.4(a), *Allegheny Co. v. Commonwealth*, 518 Pa. 556, 544 A.2d 1305, 1309 (1988).

CONCLUSION

For the foregoing reasons it is respectfully requested that the Petition for Writ of Certiorori be denied.

Respectfully submitted:

/s/ D. Driscoll
DONALD DRISCOLL
Counsel For Respondents

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

INMATES OF THE ALLEGHENY COUNTY JAIL, THOMAS PRICE BEY, ARTHUR GOSLEE, ROBERT MALONEY, and CALVIN MILLIGAN on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

CYRIL H. WECHT, President of the Allegheny County Board of Prison Inspectors and the other members of the Board: THOMAS FOERSTER and WILLIAM H. HUNT, Commissioners for Allegheny County; FRANK J. LUCCHINO, Controller for Allegheny County, EUGENE COON, Sheriff for Allegheny County; THE HONORABLE PATRICK R. TAMILIA, MICHAEL J. O'MALLEY and MARION K. FINKELHOR, Judges Court of Common Pleas of Allegheny County; RICHARD S. CALIGUIRI, Mayor of the City of Pittsburgh; HARRIET McCRAY; MONSG. CHARLES OWEN RICE and CHARLES KOZAKIEWICZ, Warden of the Allegheny County Jail, and WILLIAM B. ROBINSON, Executive Director of Prison Inspectors, and CYRIL WECHT, THOMAS FOERSTER and WILLIAM H. HUNT, as Commissioners of Allegheny County,

Defendants,

v.

COMMONWEALTH OF PENNSYLVANIA,

Third-Party Defendant.

CIVIL ACTION
76-743

STIPULATION AMONG PLAINTIFFS AND DEFENDANTS/THIRD PARTY PLAINTIFFS AND ORDER OF COURT

Plaintiffs and Defendants/Third Party Plaintiffs (hereinafter referred to as Defendants) in this action hereby stipulate, agree and consent to the incorporation of the following provisions as a final order of the Court in this matter:

1. The Defendants commit themselves to the development of at least one hundred (100) beds on a site outside of the Jail to reduce the present and anticipated overcrowding at that facility, pending renovation of the old Jail facility or replacement thereof, said site to be open and accepting inmates no later than June 1, 1990.

2. The Defendants commit themselves to bringing all accessible wiring in the Jail into compliance with the prevailing building code, and will start work on that project immediately.

3. The Defendants commit themselves to either removing or encapsulating all or at least that portion of the asbestos in the Jail identified in the report of Air Quality Services, Inc., dated June 7, 1989, as being particularly hazardous and will start work on that project immediately. In the event that the Defendants disagree with any portion of said report, the parties shall consult with one another in an attempt to resolve their differences. If unable to agree, the parties shall advise Lynette Norton, Esq., the Jail Monitor, who will appoint an impartial arbitrator to resolve the issue.

4. The Defendants commit themselves to the installation of smoke detectors in all occupied areas of the

Jail pursuant to the manufacturer's recommendations, said work to commence immediately and be completed by January 1, 1990. Defendants will periodically inspect said installation. The Court will permit a reasonable extension of time if it is satisfied that the Defendants are being diligent in their efforts to complete said project.

5. The Defendants commit themselves to stationing at least two persons on duty in the Jail at all times who have the knowledge and ability to effect a prompt shut-off of the heating and ventilation components.

6. The Defendants commit themselves to conducting semiannual inspections and will file with the Court reports under an engineer's seal of the structural stability and integrity of the steel supports to the North, East and West Blocks of the facility and to immediately correct any yielding, buckling or bowing of any of the supports in those areas or, in the alternative, to discontinue the use of the cell blocks involved until the conditions are corrected.

7. The Defendants commit themselves to the development of a treatment/work release facility for the mentally ill comparable to the presently planned drug treatment facility as set forth in Defendant's Exhibit 3, admitted at the June 12, 1989 court hearing. A specific plan for this project and a progress report on its implementation shall be included in the monthly progress reports required by the Court's Order of May 12, 1989.

8. The Defendants commit themselves to providing Plaintiffs' counsel with copies of the review form or methodology to be used in conducting the inmate profiles.

9. The Plaintiffs hereby withdraw their Motion for Sanctions/Additional Sanctions and waive their rights to request sanctions for any alleged violations of pre-existing Court Orders up through the date of the filing of this Stipulation and, in consideration of the County's commitments in the foregoing paragraphs, join the Defendants in requesting that this Court not impose any sanctions whatsoever on the Defendants for alleged Constitutional violations up through the date of the signing of this Stipulation.

10. The Plaintiffs move the Court not to impose sanctions, fully recognizing that fines resulting from the imposition of sanctions can be usefully expended on the construction of the work release facilities as set forth in the Criminal Justice Plan previously submitted to the Court.

11. In consideration of the Defendants' commitments previously set forth herein, the Plaintiffs hereby agree that the old Allegheny County Jail facility must be kept open pending either its renovation or its replacement by a new facility until June 30, 1992. The Defendants shall advise the Court no later than October 1, 1989 as to whether they will renovate or close the Jail. If a decision is made to renovate the Jail, the Defendants shall also advise the Court of the precise location of the facility which will be provided to house the excess inmates unable to be housed during and following the completion of the Jail renovations. If, in the opinion of the Court, the County is making reasonably prompt progress in implementing all of its plans for housing inmates, the Court will favorably consider requests for reasonable extensions of time for said renovations or construction.

12. The Plaintiffs agree that the Allegheny County Criminal Justice Plan, (Defendants' Exhibit 10), introduced at the June 12, 1989 court hearing and explained through the testimony and as qualified by this Stipulation, is consistent with the prior Court Orders in this matter.

13. The Parties agree that this Stipulation serves to substitute for the Findings of Fact and Conclusions of Law required by the Court in its Order of June 13, 1989.

14. The Plaintiffs and Defendants/Third Party Plaintiffs hereby stipulate and agree and further consent to the adoption of all of the foregoing provisions as a final Order of the Court in this matter.

Dated: 7/5/89 /s/ D. Driscoll
Donald Driscoll, Esq.
Neighborhood Legal Services Asso.
928 Penn Avenue
Pittsburgh, PA 15222-3799

Attorney for Plaintiffs

Dated: 7/5/89 /s/ James J. Dodaro
James J. Dodaro, Esq.
County Solicitor

Dated: 7/5/89 /s/ George C. Diamantopulos
George C. Diamantopulos, Esq.
Assistant County Solicitor
Allegheny Country Law Department
300 Fort Pitt Commons
445 Fort Pitt Blvd.
Pittsburgh, PA 15219

Attorneys for Defendants/Third Party Plaintiffs

The Third Party Defendants have no objection to the filing of this Stipulation and adoption as a final Order of the Court.

Dated: 7/6/89

/s/ Thomas Halloran
Thomas Halloran, Esq.
Office of the Attorney General
4th Floor, Manor Building
564 Forbes Avenue
Pittsburgh, PA 15219

ORDER

AND NOW, to wit, this 7th day of July, 1989, it is ORDERED, ADJUDGED and DECREED that the Court hereby accepts the above Stipulation as stated. No sanctions will be applied for the period November 17, 1988 to the date of this Order.

The Court will consider sanctions from this date forward any time that the population cap previously set is exceeded and, as well, any time that inmates are released because of overcrowding.

/s/ Maurice B. Cohill, Jr.
Maurice B. Cohill, Jr.
Chief Judge

cc: Lynette Norton, Esq.
Sherman & Picadio
600 Grant Street
Suite 3180
Pittsburgh, PA 15219

cm: All parties of record